

AS

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-361-C - ORDER NO. 97-1063

DECEMBER 23, 1997

IN RE: Application of BellSouth BSE, Inc.) ORDER
for a Certificate of Public Convenience) APPROVING
and Necessity to Provide Local Exchange) CERTIFICATE TO
Telecommunications Services in the State) PROVIDE LOCAL
of South Carolina.) SERVICE

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the Application of BellSouth BSE, Inc. ("BSE" or "the Company"). The Application requests that the Commission issue a Certificate of Public Convenience and Necessity authorizing BSE to provide local telephone service in the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed BSE to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings and to provide notice of the hearing date on this matter. BSE complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and

Hearing. Petitions to Intervene were received from the South Carolina Telephone Coalition ("SCTC"), MCI Telecommunications Corporation (MCI) and MCI Metro Access Trans. (Metro)(also collectively known as MCI), South Carolina Cable Television Association (SCCTA), AT&T Communications of the Southern States, Inc. (AT&T), and American Communications Services, Inc. (ACSI).

A hearing was convened on November 5, 1997, at 2:30 p.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. BSE was represented by Harry M. Lightsey, III, Esquire and Kevin A. Hall, Esquire. MCI and Metro were represented by John M.S. Hoefer, Esquire. SCCTA was represented by B. Craig Collins, Esquire. AT&T was represented by Francis P. Mood, Esquire and Steve A. Matthews, Esquire. ACSI was represented by Russell B. Shetterly, Esquire. The Commission Staff ("Staff") was represented by F. David Butler, General Counsel. SCTC did not appear at the hearing.

Prior to the hearing, BSE and the SCTC executed a Stipulation. The Stipulation was filed with the Commission prior to the hearing in this matter. As a result of the Stipulation, SCTC withdrew its intervention in the Docket. The Stipulation provides the following:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to BSE if the Commission makes the necessary findings to grant the Certificate and if all stipulated conditions are met;
- (2) BSE agrees that any Certificate granted by the Commission will authorize BSE to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as

otherwise provided;

- (3) BSE agrees that it is not requesting the Commission to find whether competition is in the public interest for rural areas;
- (4) BSE agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until BSE provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. BSE also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;
- (5) BSE agrees that if, after BSE gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then BSE will not provide service to any customer located within the service area in question without prior and further Commission approval;
- (6) BSE acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;
- (7) BSE and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and

- (8) BSE agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and BSE and was filed with the Commission prior to the hearing in this matter. We therefore approve the stipulation.

In support of its Application, BSE presented Robert C. Scheye, Vice-President, to testify. The purpose of Mr. Scheye's testimony was (1) to demonstrate that BSE possesses sufficient technical, managerial, and financial resources and abilities to provide the services for which BSE seeks authority and (2) to show that the granting of this authority to BSE is in the public interest.

DISCUSSION

S.C. Code Ann. §58-9-280 (Supp. 1997) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, BSE's Application, and the evidence presented at the hearing, the Commission finds and concludes that the Certificate sought by BSE should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented at the hearing which relates to that criteria:

(1) The Commission finds that BSE possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1997). Mr. Scheye testified that BSE's technical ability is based upon that shown by the vast experience and financial qualifications of its ultimate parent, BellSouth Telecommunications, Inc. (BST), which furnished independent employees for BSE. We believe that because of this experience, BSE's management has an exceptional understanding of the importance of customer care, billing, and the operation of a telecommunications network.

No other party offered any evidence in opposition to Mr. Scheye's testimony on these points. Based on the undisputed evidence of the record, the Commission finds that BSE possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that BSE will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1997). Mr. Scheye testified that BSE intends to provide local exchange services. Mr. Scheye specifically stated that BSE will comply with all applicable rules, policies, and statutes applicable to the offering of those services and that BSE fully intends to meet the Commission's service standards. Furthermore, Mr. Scheye stated that BSE would make certain changes to its tariff, as suggested by Staff, to bring the tariff into compliance with Commission Rules and Regulations. No party offered any evidence to dispute Mr. Scheye's testimony.

Based on the undisputed testimony from Mr. Scheye, the Commission believes, and so finds, that BSE will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that BSE's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Scheye stated that BSE's service offerings would not adversely impact the availability of affordable local exchange service. Mr. Scheye offered that certification of BSE would serve the public interest through enhanced competition in the market for local services. BSE noted that it wished to provide integrated "one stop shopping" for all their telecommunications and related services. No party offered any evidence that the provision of local exchange service by BSE would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by BSE will not adversely impact affordable local exchange service.

(4) The Commission finds that BSE will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1997). The Stipulation with SCTC shows that BSE will comply with the Commission's universal service requirements. Based on the undisputed evidence of record, the Commission finds that BSE will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by BSE "does not otherwise adversely impact the public

interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1997). Mr. Scheye offered that approval of BSE to provide local telecommunications services will benefit consumers by increasing competition. Through the promotion of competition, Mr. Scheye offers that telephone companies will be forced to provide high quality services at competitive rates, which will ultimately benefit the consumers. Mr. Scheye noted that BSE would interface with BST like any other competitive local exchange carrier. Mr. Scheye's testimony was undisputed as no party offered any evidence that approval of BSE's Application would adversely impact the public interest. Therefore, the Commission finds that approval of BSE's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1997).

MCI made two Motions at the hearing which we must discuss. The two Motions, made at the close of the hearing on this matter, were as follows: (1) that the Commission should dismiss the application for want of jurisdiction because its application did not contain a price list; and (2) that BSE should not be certificated as an incumbent local exchange company (ILEC) pursuant to South Carolina law, because of its affiliate nature with BST. We have examined both of these Motions, and we must deny them.

MCI's first Motion is based on the fact that BSE's filing does not contain a piece of paper specifically labeled "price list." MCI's argument ignores the fact that BSE's filing does contain a proposed tariff that meets all Commission requirements for a tariff

and a price list. Further, BSE has committed to this Commission that before it begins to provide service in South Carolina, it will file for Commission approval of a tariff and final price list which will include all regulated service offerings. We think that, under the circumstances, BSE has met the statutory requirements of SC Code Ann. Section 58-9-280(B). Having a meaningful separate price list prior to the establishment of an interconnection agreement with other carriers, or without fully constructing the facilities necessary to provide the service is an impossibility. Therefore, we hold that BSE did everything it could to furnish an appropriate "price list" under the circumstances of the case, and we deny MCI's first Motion.

MCI's second Motion was based on the statutory definition of an ILEC found at S.C. Code Ann. Section 58-9-10(11) (Supp. 1997). MCI alleges, and other intervenors agree, that BSE, being an affiliate of BST, is therefore an ILEC, and may not provide service in BST's territory. We disagree. The term "incumbent local exchange carrier" is defined to mean any entity which provides local exchange service "pursuant to a certificate of public convenience and necessity issued by the Commission before July 1, 1995." As BSE points out in its brief, it was not even incorporated until July 17, 1997. Therefore, should we award BSE a certificate through the present application, it will be operating pursuant to a certificate issued after December 31, 1995. Therefore, BSE will be, by statutory definition, a "new entrant LEC," which is defined to mean "a telecommunications company holding a certificate of

public convenience and necessity issued by the Commission pursuant to Section 59-9-280(B) after December 31, 1995 to provide local exchange services within a certificated geographic area of the State." See S.C. Code Section 58-9-10(13)(Supp. 1997). MCI's second Motion must be denied.

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by BSE should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of BSE for a Certificate of Public Convenience and Necessity authorizing BSE to provide all forms of local telephone service in the State of South Carolina, except as described and excepted below.

2. The Stipulation filed by BSE and the SCTC is approved by this Commission, is binding upon BSE and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina. BSE shall conduct its operations in compliance with the Stipulation until further Order of the Commission.

3. BSE shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include any modifications and changes as proposed by the Commission Staff and to which BSE agreed.

4. BSE shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs.

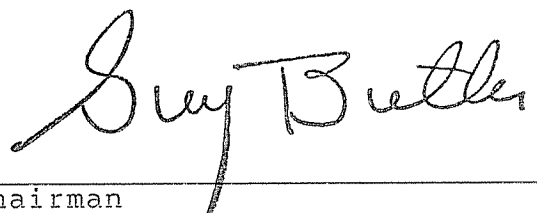
In addition, BSE shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. BSE shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, BSE shall promptly notify the Commission in writing if the representatives are replaced. BSE is directed to comply with all Commission regulations unless expressly waived by the Commission.

5. BSE shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

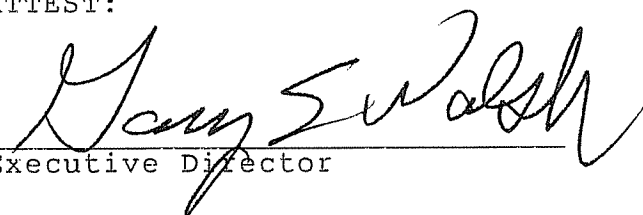
6. The Motions of MCI and Metro are denied.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

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ATTACHMENT A

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230